

Court of Appeals, State of Michigan

ORDER

Estate of Keith Hall v Mercy Memorial Hospital Corp

Bill Schuette
Presiding Judge

Docket No. 276814

William C. Whitbeck, C.J.

LC No. 05-020901 NH

Peter D. O'Connell
Judges

The Court orders that the motion for immediate consideration is GRANTED.

In lieu of granting leave to appeal, we VACATE the trial court's order denying defendant's motion for summary disposition and REMAND for further proceedings.

In its application for leave to appeal, defendant relies on *Mouradian v Goldberg*, 256 Mich App 566; 644 NW2d 805 (2003), overruled by *Kirkaldy v Rim*, 478 Mich 581; 734 NW2d 201 (2007), and *Glisson v Gerrity*, 274 Mich App 525; 734 NW2d 614 (2007), reversed in part, vacated in part, ___ Mich ___, ___ NW2d ___ (2007), for the proposition that the filing of a complaint without a statutorily compliant affidavit of merit does not toll the statute of limitations. Since defendant filed his application for leave to appeal, our Supreme Court has overruled *Mouradian*, supra, and reversed, in part, *Glisson*, supra. *Kirkaldy*, supra. We therefore vacate the trial court order denying the motion for summary disposition and remand for further proceedings pursuant to *Kirkaldy*, supra.

This Court retains no further jurisdiction.

Whitbeck, C.J., would GRANT leave. No remand is necessary here because *Kirkaldy*, supra, requires that, "if the defendant believes that an affidavit of merit is deficient, the defendant must challenge the affidavit[.]" and the trial court must then assess the validity of the affidavit of merit. If the challenge is successful, the affidavit will lose its presumption of validity and the period of limitations will begin to run. Here, defendant has, in his motion for summary disposition, already challenged the validity of the affidavit, and the trial court has already ruled that the affidavit sufficiently put defendant on notice of the claims of the suit. (Hearing Transcript, pg 21.)



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

OCT 25 2007

Date

Sandra Schultz Mengel
Chief Clerk